

FRED PUPCHECK

IBLA 78-638      December 13, 1978

Appeal from decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 16088-B.

Affirmed.

1.      Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals

A lessee's forgetfulness and inadvertence are not justifiable excuses for failure to pay the annual rental on or before the anniversary date of the oil and gas lease. Nor does mailing payment 4 days after the due date constitute reasonable diligence. The timeliness of filing Federal tax returns and payments and of making rental payments on oil and gas leases are governed by different statutes and regulations and are not the same.

APPEARANCES: Fred Pupcheck, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Fred Pupcheck appeals from the August 22, 1978, decision of the Montana State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease M 16088-B. The lease terminated automatically for failure to pay the annual rental on or before the anniversary date of the lease, August 1. Appellant's money order was dated and post marked August 4, 1978, and received in the BLM office August 7, 1978.

In his statement of reasons appellant asserts that due to his advanced age, a failing memory, and misplacing his records on this

lease, he believed the rental payment was not due until August 15, 1978. He states that he has never been late in making a payment before and notes that the Internal Revenue Service grants a grace period. He objects strongly to BLM's action.

The termination of the lease here is not due to any BLM employee's action, as appellant seems to believe. Rather, it is caused by express statutory mandate in 30 U.S.C. § 188(b), that a lease will automatically terminate by operation of law for failure to pay the rental on or before the anniversary date. The lease may be reinstated only if it is shown that the failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1.

[1] In construing the statutory requirements permitting reinstatement in those limited circumstances, it has been held that to constitute a justifiable excuse the lessee must show that the delay was caused by factors outside his control which were the proximate cause of his failure. E.g., Frederick C. Farrington, 36 IBLA 70 (1978). A lessee's forgetfulness and inadvertence are not justifiable excuses for failure to pay the rental timely. Gent Davis, 36 IBLA 311 (1978). Nor does mailing payment 4 days after the due date constitute reasonable diligence. Gent Davis, supra. The timeliness of filing Federal tax returns and payments and of making payments on oil and gas leases are governed by different statutes and regulations and are not the same. The fact that a grace period is allowed on tax filings is not relevant here. Nor does the fact that prior payments have been timely relieve appellant of the consequences of his late payment in this case. David R. Smith, 33 IBLA 63 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Newton Frishberg  
Chief Administrative Judge

